

DRAFT

MILLTOWN WATER SUPPLY AGREEMENT


1282100 - R8 SDMS

WHEREAS, the water supplies of many of the buildings in the Milltown area are unsuitable for human consumption due to arsenic contamination; and

WHEREAS, the Department of Health and Environmental Sciences, in conjunction with the Environmental Protection Agency, has constructed a water system, supplied with water from an uncontaminated source, which is adequate to supply water to those buildings with contaminated water supplies;

AN AGREEMENT IS HEREBY MADE between the Milltown Water Users Association ("Association"), an association of those individuals whose water supplies are arsenic-contaminated, and the Department of Health and Environmental Sciences ("DHES") for the purpose of operating and maintaining a safe and potable water system for the members of the Association.

SECTION I: DUTIES OF ASSOCIATION

In consideration of construction by DHES of a water system to replace that contaminated by arsenic and of assumption by DHES of responsibility for operation and maintenance of the system for a one-year trial period, the Association agrees to do the following:

A. Ensure that every user of the water system is a member of the Association and committed to the terms of this agreement. [For purposes of this agreement, a user is considered to be each owner of a freestanding single residence or business and each owner or operator of an establishment, apartment building, trailer court, etc., which is occupied by more than one residence or business but owned or operated by a single entity.]

B. Immediately after this agreement goes into effect, establish an interest-bearing account to be used for major equipment replacement and/or repair of the water system in the future, and assess a monthly fee of each user sufficient to allow the reserve account to accumulate \$50,000 in 20 years.

C. Beginning one year after the effective date of this agreement and continuing for 19 years thereafter, the Association will:

(1) Charge a monthly fee of each user sufficient to accumulate the reserve account at a rate necessary to comply with (B) above and to cover ongoing operating and maintenance costs for the water system, including costs of pumping, minor repair, minor equipment replacement, labor, power, and water quality testing, the rate for each year to be determined as follows:

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(a) Estimate the projected costs associated with the water system for the year, including contributions to the reserve account.

(b) Divide the sum of the estimated annual costs by the sum of:

(i) the number of single residences or businesses served by the water system; and

(ii) the number of individuals regularly occupying multiple-household or multiple-business apartments, trailer courts, etc., divided by 2.5 (estimated size of average household).

(c) To determine a monthly base fee, divide the figure derived in (b) above by 12 (months/year).

(d) Charge users in freestanding residences or businesses the monthly base fee, and charge users responsible for apartment buildings, trailer courts, etc., the fee obtained by using the following formula:

$$\text{Monthly rate} = \text{monthly base fee} \times \frac{\text{number of occupants}}{2.5}$$

(2) Deposit those funds from fee collections which are to be used for ongoing operation and maintenance costs in an interest-bearing account and ensure that the funds are used only for operation and maintenance of the water system.

(3) Hire staff and make outlays of fee money sufficient to ensure that the water system is properly operated, maintained, and repaired in accordance with directives approved by DHES.

(4) Ensure that the water system is operated by an operator meeting the certification requirements of Title 37, Chapter 42, Montana Code Annotated, and its rules for water distribution system operators.

(5) Comply with the requirements of the rules contained in Title 16, Chapter 20, Sub-chapter 2, Administrative Rules of Montana, concerning standards for public water supplies and periodic testing requirements.

(6) Ensure that every user of the water system is a member of the Association and committed to the terms of this agreement.

(7) In the event that other domestic water supplies in the Milltown area become contaminated, in addition to those identified on the effective date of this agreement, allow the additional residences or businesses to join the Association and to connect to the water system, to the extent that the water system is capable of handling them.

(8) Allow the DHES or its agents to inspect the water system or any records relating to operation of the water system at any time between 8 a.m. and 5 p.m. on weekdays or at any other time mutually agreeable to the parties.

(9) Follow any directives from DHES to perform certain items of maintenance identified by DHES as necessary and keep any records identified by DHES as needed to protect DHES' investment in the water system.

SECTION II: RESERVATION OF DHES RIGHTS

DHES reserves the right to:

(1) Terminate this agreement in the event that the Association willfully or negligently violates its terms and to appropriate funds in the reserve and operation and maintenance accounts to continue operation of the water system.

(2) Take legal action in its own name to collect any due and unpaid fees from a user in the event that the Association has failed to take such action within 6 months after the delinquency occurs.

SECTION III: OWNERSHIP OF WATER SYSTEM

The water system will be the property of the State of Montana for one year after the effective date of this agreement and will thereafter be the property of the Association, with the proviso that ownership of the system will revert to the State if this agreement is terminated involuntarily pursuant to Section II(1) above.

SECTION IV: TERM OF AGREEMENT

This agreement is effective on the date it is signed by both parties and shall continue in effect for 20 years or until it is terminated pursuant to Section II(1), whichever date is earlier.

SECTION V: HOLD HARMLESS AND INDEMNIFICATION

The Association shall hold harmless and indemnify DHES for any liability, claims, demands, costs, or actions at law for death, bodily injury, or property damage arising out of the performance of this agreement whenever the liability, claim, demand, cost, action, or damages are caused by or arise out of the acts or negligence of the Association, or its employees or agents. The Association agrees that it will defend DHES against any claims, demands, or actions at law arising out of its performance of this agreement, or that of its employees or agents.

SECTION VI: LIAISONS

The Association's liaison to DHES for purposes of this agreement is Arthur Bush or his successor.

DHES' liaisons to the Association for purposes of this agreement are Mike Rubich and Barbara Karlsen or their respective successors.

To express the parties' intent to be bound by the terms of this agreement, they have executed this document on the dates set out below:

MILLTOWN WATER USERS ASSOCIATION

_____	BY: _____
Date	Arthur Bush, President
_____	BY: _____
Date	Kenneth Lizotte, Member, Executive Committee
_____	BY: _____
Date	Uuno Hill, Member, Executive Committee
_____	BY: _____
Date	Barbara Stroh, Member, Executive Committee
_____	BY: _____
Date	Gordon Long, Member, Executive Committee
_____	BY: _____
Date	Linda Schmitz, Member, Executive Committee
	Box 187 Milltown, Montana 59851

DEPARTMENT OF HEALTH AND
ENVIRONMENTAL SCIENCES

_____	BY: _____
Date	John J. Drynan, M.D., Director